

State of Wisconsin



2009 Senate Bill 200

Date of enactment: **October 6, 2009**
Date of publication*: **October 20, 2009**

2009 WISCONSIN ACT 44

AN ACT to create 118.07 (4) and 299.49 of the statutes; **relating to:** products containing mercury and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 118.07 (4) of the statutes is created to read:

118.07 (4) No school board, private school, or charter school may knowingly do any of the following:

(a) Purchase or use free-flowing elemental mercury for any purpose.

(b) Purchase or use a mercury-containing compound or an instrument or measuring device that contains mercury unless one of the following exceptions applies:

1. No reasonably acceptable, mercury-free alternative exists, in which case the school board, private school, or charter school shall use a compound, instrument, or measuring device containing the lowest mercury content available.

2. The purchase or use of the compound, instrument, or measuring device is required under federal law.

3. The only mercury-added component in the instrument or measuring device is a button cell battery.

(c) Beginning January 1, 2012, store free-flowing elemental mercury or, unless one of the exceptions under par. (b) applies, store a mercury-containing compound or an instrument or measuring device that contains mercury.

SECTION 2. 299.49 of the statutes is created to read:

299.49 Products containing mercury. (1) DEFINITIONS. In this section:

(a) "Mercury-added product" means a product to which mercury is intentionally added during formulation or manufacture, or a product containing one or more components to which mercury is intentionally added during formulation or manufacture.

(b) "Mercury-added thermostat" means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Mercury-added thermostat" includes thermostats used to sense and control room temperature in residential, commercial, industrial, and other buildings, but does not include a thermostat used to sense and control temperature as part of a manufacturing process or in the generating, transmission, or distributing facilities for electric energy, gas, or water.

(c) "Mercury relay" means a mercury-added product or device that opens or closes electrical contacts to effect the operation of other devices in the same or another electrical circuit. "Mercury relay" includes mercury displacement relays, mercury wetted reed relays, and mercury contact relays.

(d) "Mercury switch" means a mercury-added product or device that opens or closes an electrical circuit or gas valve. "Mercury switch" includes mercury float switches actuated by rising or falling liquid levels, mercury tilt switches actuated by a change in the switch position, mercury pressure switches actuated by a change in

* Section 991.11, WISCONSIN STATUTES 2007-08 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

pressure, mercury temperature switches actuated by a change in temperature, and mercury flame sensors. "Mercury switch" does not include a mercury-added thermostat.

(2) RESTRICTIONS ON SALE AND USE OF MERCURY. (a) *Fever thermometers.* No person may sell or supply a mercury fever thermometer to a consumer or patient, unless the thermometer has been prescribed for the consumer or patient by a practitioner, as defined in s. 450.01 (17). A mercury fever thermometer manufacturer shall supply with each thermometer clear instructions on the careful handling of the thermometer to avoid breakage, on proper cleanup if the thermometer breaks, and on proper disposal. For purposes of this subsection, "mercury fever thermometer" means a thermometer that contains mercury for the purpose of measuring body temperature, but does not include a thermometer containing mercury solely within a button cell battery.

(b) *Manometers.* No person may sell or distribute a mercury-containing manometer of the type in milking machines on dairy farms. Manufacturers of such mercury-containing manometers shall notify wholesalers and retailers that the sale or distribution of such manometers is prohibited and shall instruct them on the proper disposal of remaining inventory.

(c) *Mercury-added thermostats.* No person may sell, or distribute for promotional purposes, a mercury-added thermostat.

(d) *Instruments and measuring devices.* 1. No person may sell or distribute any of the following items, if the item contains mercury:

- a. A barometer.
- b. An esophageal dilator, bougie tube, or gastrointestinal tube.
- c. A flowmeter.
- d. A hydrometer.
- e. A hygrometer or psychrometer.
- f. A manometer other than a manometer prohibited from sale under par. (b).
- g. A pyrometer.
- h. A sphygmomanometer.
- i. A thermometer other than a thermometer prohibited from sale under par. (a).

2. Subdivision 1. does not apply to the sale of a mercury-added product listed in subd. 1. a. to i. if use of the product is required under federal law or if the only mercury-added component in the product is a button cell battery.

(e) *Mercury switches and relays.* 1. No person may sell or distribute, individually or as a product component, a mercury switch or mercury relay. This subdivision does not apply to a switch or relay that is used to replace a switch or relay that is a component in a larger product in use prior to the effective date of this subdivision [LRB inserts date], if one of the following applies:

a. The larger product is used in manufacturing or in the generating, transmission, or distributing facilities for electric energy, gas, or water.

b. The switch or relay is integrated with, and not physically separate from, other components of the larger product.

2. Subdivision 1. does not apply to the sale of a mercury switch or mercury relay if use of the switch or relay is a federal requirement.

(f) *Household items.* No person may sell or distribute any of the following items if the item contains mercury, unless the only mercury-added component in the item is a button cell battery:

1. A toy or game.
2. Jewelry.
3. Clothing or shoes.
4. An over-the-counter pharmaceutical product for human use.
5. A cosmetic, toiletry, or fragrance product.

(3) EXEMPTIONS. (a) The prohibitions under this section do not apply to the sale of a mercury-added product for which the department grants an exemption under this subsection.

(b) A manufacturer or user of a product may apply for an exemption from this section by filing a written petition with the department. The department may grant an exemption with or without conditions if it finds that the mercury-added product is reasonable and appropriate for a specific use. The department shall find that a product is reasonable and appropriate for a specific use only if a manufacturer or user establishes all of the following:

1. A system exists for the proper collection, transportation, and processing of the product at the end of its life.
2. One of the following applies:
 - a. Use of the product provides a net benefit to the environment, public health, or public safety when compared to available nonmercury alternatives.
 - b. Technically feasible nonmercury alternatives are not available at comparable cost.

(c) Prior to approving an exemption, the department may consult with neighboring states to promote consistency in the regulation of mercury-added products. The department may request a person who is granted an exemption to maintain records and provide reasonable reports to the department that characterize mercury use in the products for which the exemption was granted. Exemptions may not exceed 5 years and may be renewed upon written application if the department finds that the mercury-added product continues to meet the criteria specified in par. (b) and the manufacturer or other persons comply with the conditions of its original approval. The department shall promulgate rules for processing an exemption application that provide for public participa-

tion, taking into account the role of the interstate clearinghouse under sub. (4).

(4) INTERSTATE CLEARINGHOUSE. The department may participate in the establishment and implementation of a regional, multistate clearinghouse to assist in carry-

ing out the requirements of this section.

SECTION 3. Effective date.

(1) This act takes effect on the first day of the 12th month beginning after publication.
